



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1998

Mr. Wayne D. McHam
Chief of Police
City of Red Oak
Red Oak City Hall
411 West Red Oak Road
Red Oak, Texas 75154

OR98-1396

Dear Chief McHam:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 115877.

The City of Red Oak Police Department (the "department") received an open records request for "any and all documents pertaining to a March 14, 1998, incident involving Mike Sackett, including but not limited to the accident report, incident/arrest reports, any citation, signed Miranda statement, and receipt for the fine paid." In response to the request, you submit to this office for review a copy of the information which you assert is responsive.¹ You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception and have reviewed the information submitted.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

....

The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision Nos. No. 588 (1991), 551 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).² Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

In this instance, you state that "[s]o as not to have to disclose the states [sic] case, we are requesting these documents be exempted from the Open Records Act . . . Under exemption [552.103]." However, absent a letter or other documentation from the District Attorney's Office or the prosecuting attorney with the litigation interest stating that the information should not be released, we conclude that you have not met your section 552.103 burden. See Open Records Decision No. 469 (1987) at 2. From the submitted documentation, the department has not shown that it has a litigation interest in the records at issue. Therefore, the requested records may not be withheld under section 552.103 of the Government Code.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", written over a large, loopy circular flourish.

Sam Haddad
Assistant Attorney General
Open Records Division

²A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation.

³We further note that basic information in an offense report generally may not be withheld under section 552.103. Cf. Open Records Decision No. 597 (1991); see also *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld).

SH/rho

Ref.: ID# 115877

Enclosures: Submitted documents

cc: Mr. Robert W. Bardell, Contributing Writer
Ellis County Press
706 Rock Hill Drive
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(w/o enclosures)